

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

RAMAR D. BROWN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 20-00326-CV-W-BCW-P  
Crim. No. 06-00175-02-CR-W-BCW

**REPLY TO GOVERNMENT'S SUGGESTIONS IN  
OPPOSITION TO MOVANT'S MOTION UNDER 28 U.S.C. § 2255**

COMES Movant, RAMAR D. BROWN, ("Brown"), appearing *pro se*, and files his Reply to Government's Suggestions in Opposition to Movant's Motion under 28 U. S. C. § 2255 ("GR") [CvDoc. 14] as follows:

**PRELIMINARY STATEMENT**

As a preliminary matter, Brown respectfully requests that the Court be mindful that "a *pro se* complaint should be given liberal construction, we mean that if the essence of an allegation is discernible ... then the district court should construe the complaint in a way that permits the layperson's claim to be considered within the proper legal framework." See *Solomon v. Petray*, 795 F.3d 777, 787 (8<sup>th</sup> Cir. 2015); *Estelle v. Gamble*, 429 U.S. 97 (1976) (same); and *Haines v. Kerner*, 404 U.S. 519 (1972) (same). Brown also adopts by reference and in whole his previously filed § 2255 and Memorandum of Law in Support [CvDoc. 1].

**REPLY TO GOVERNMENT'S OPPOSITION**

The GR is divided into four (4) main sections: (I) Summary; (II) Procedural History; (III) Argument and Authorities; and (IV) Conclusion. Brown will reply sequentially to each main section:

## **I. Summary**

This section of the GR summarizes the case and the ground presented for review by Brown in his § 2255 Motion. See CvDoc. 14 at pp.1-2. The GR also contends that Brown's motion should be dismissed. For the reasons stated below, Brown objects and states that his motion should be granted.

## **II. Procedural History**

This section of the GR merely gives a fair and accurate description of the procedural history in this case. See CvDoc. 14 at pp. 2-3.

## **III. Argument and Authorities**

This main section of the GR is also divided into three subsections: (A) The Government Does Not Dispute the Retroactivity of Davis; (B) Carjacking Remains a "Crime of Violence" Under the Force Clause; and (C) An Evidentiary Hearing Is Not Required To Resolve the Claim, and this Court Should Deny A Certificate of Appealability.

### **A. The Government Does Not Dispute the Retroactivity of Davis**

Brown does not take exception or object to this subsection because he concurs that *Davis* is retroactive.

### **B. Carjacking Remains a "Crime of Violence" Under the Force Clause**

The GR claims that above statement in support of its opposition. However, the Count in question is Count 25 ((Brandishing a Firearm During and in Relation to a Crime of Violence) of the Indictment to which Brown pled guilty. Count 25 called for a sentence of 84 months, which was run consecutive to Brown's 216 month sentence. However, the brandishing offense in Count 25 is also detailed in Paragraph 13 of Count 1 of the Indictment. Therefore, it is essential to note that it is not

clear which conviction served as the basis for that offense: carjacking or conspiracy to commit carjacking. Conspiracy to commit carjacking does not qualify as a crime of violence, whereas carjacking does qualify. Therefore, it is ambiguous as to which offense applies to Count 25. Accordingly, Brown respectfully requests that the Court use the “rule of lenity” in this case and decide this case in Brown’s favor. See *King v. United States*, 595 F.3d 844 (8th Cir. 2010).

C. An Evidentiary Hearing Is Not Required To Resolve the Claim, and this Court Should Deny A Certificate of Appealability.

Because there are facts in dispute between the parties, an evidentiary hearing is necessary to resolve these facts and expand the record. This would aid the Court in the decisional process.

IV. Conclusion

The GR concludes by requesting that Brown’s § 2255 Motion be denied. See CvDoc. 14 at p. 8. Brown objects and states that for the above and foregoing reasons, the Court should grant this motion and dismiss Count 25 (the alleged violation of 18 U.S.C. 924(c)) of the Indictment).

Respectfully submitted,

Dated: November 17, 2020.



RAMAR D. BROWN  
REG. NO. 19116-045  
FCI SCHUYLKILL  
FEDERAL CORR. INSTITUTION  
P.O. BOX 759  
MINERSVILLE, PA 17954  
Appearing *Pro Se*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2020, I sent via U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing Reply to Government's Suggestions in Opposition to Movant's Motion under 28 U. S. C. § 2255 to Matthew P. Wolesky, Assistant United States Attorney at 400 East 9th Street, Room 5510, Kansas City, Missouri 64106.

  
RAMAR D. BROWN

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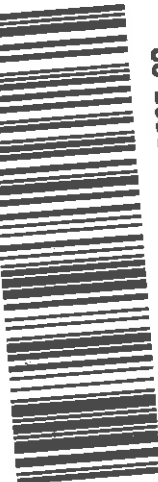
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RAMAR D. BROWN  
Reg. No. 19116-045  
FCI SCHUYLKILL  
FEDERAL CORR. INSTITUTION  
P.O. BOX 759  
MINERSVILLE, PA 17954

TO:

Clerk, U. S. District Court  
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Kansas City - Western Division  
400 East Ninth Street  
Kansas City, MO 64106

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